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CUMULATIVE
POCKET SUPPLEMENT

IDAHO CODE

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Idaho Code Commission

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COMMISSIONERS

TITLES 38, 39(1-44)

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P. Idaho Rules of Civil Procedure

I.R.E. Idaho Rules of Evidence

I.C.R. Idaho Criminal Rules

M.C.R. Misdemeanor Criminal Rules

I.I.R. Idaho Infraction Rules

I.J.R. Idaho Juvenile Rules

I.C.A.R. Idaho Court Administrative Rules

I.A.R. Idaho Appellate Rules

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

**ADJOURNMENT DATES OF SESSIONS OF
LEGISLATURE**

Year	Adjournment Date
2012	March 29, 2012
2013	April 4, 2013



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TITLE 38

FORESTRY, FOREST PRODUCTS AND STUMPAGE DISTRICTS

CHAPTER.

1. IDAHO FORESTRY ACT, §§ 38-104B, 38-107.
7. FOREST, WILDLIFE AND RANGE EXPERIMENT STATION, §§ 38-715, 38-716.

CHAPTER.

8. FLOATING TIMBER, §§ 38-804, 38-805.
12. LOG SCALING, § 38-1203.

CHAPTER 1

IDAHO FORESTRY ACT

SECTION.

38-104B. Nonprofit rangeland fire protection associations.

SECTION.

38-107. Uncontrolled fires a nuisance — Abatement — Civil liability.

38-104B. Nonprofit rangeland fire protection associations. —

(1) “Nonprofit rangeland fire protection association” means a nonprofit corporation or nonprofit unincorporated association, that has entered into an agreement for the detection, prevention or suppression of forest and range fires with the state of Idaho or any agency of the state of Idaho pursuant to title 38, Idaho Code.

(2) A group of rangeland owners wishing to establish a rangeland fire protection association shall petition the director of the department of lands. The director may accept petitions where:

(a) Petitioners meet the requirements established by the director concerning the legal status of the association, liability insurance and governing and managing structure; and

(b) Petitioners demonstrate financial ability to form a rangeland fire protection association; or

(c) Adequate state funding exists, as determined by the director, to assist in the initial establishment of the association.

(3) Prior to entering into an agreement, and annually thereafter, the director shall review and inspect the association for the following:

(a) The governing and managing structure of the association;

(b) The adequacy of liability insurance; and

(c) The training of all association personnel.

History.

I.C., § 38-104B, as added by 2013, ch. 59,
§ 1, p. 135.

STATUTORY NOTES

Cross References.

Director of department of lands, § 58-105.

38-107. Uncontrolled fires a nuisance — Abatement — Civil liability. — (1) Any forest or range fire burning out of control or without adequate and proper precautions having been taken to prevent its spread, is hereby declared a public nuisance, by reason of its menace to life and/or property. Any person responsible through his conduct, acts and/or control of property or operations for either the starting or the existence of such fire is hereby required to make a reasonable effort to control or extinguish it immediately, without awaiting instructions from the director of the department of lands or a fire warden. The director of the department of lands or any fire warden may summarily abate the nuisance thus constituted by controlling or extinguishing such fire and the person willfully or negligently responsible for the starting or existence of such fire shall be liable for the costs incurred by the state or its authorized agencies in controlling or extinguishing the same. The amount of such costs shall be recovered by a civil action prosecuted in the name of the state of Idaho and any amounts recovered shall be paid to the state treasurer for deposit to the forest protection fund. Civil liability provided for herein shall be exclusive of and in addition to any criminal penalties otherwise provided.

(2) Notwithstanding any other provision of law, in a civil action against any person, legal entity, state or political subdivision for forest or range fire caused by a negligent or unintentional act, which act was not willful or intentional under section 6-202, Idaho Code, the real and personal property damage is limited to:

- (a) The reasonable costs for controlling or extinguishing the forest or range fire;
- (b) Economic damages; and
- (c) Either (i) the diminution of fair market value of the real and personal property resulting from the fire, or (ii) the actual and tangible restoration costs associated with bringing the damaged real and personal property back to its pre-injured state to the extent that such actual and tangible restoration costs are reasonable and practical.

As used in this subsection, “economic damages” means objectively verifiable monetary loss including, but not limited to, out-of-pocket expenses, loss of earnings, loss of use of property or loss of business or employment opportunities. As further used in this subsection, “fair market value” means the amount a willing buyer would pay a willing seller in an arms-length transaction when both parties are fully informed about all of the advantages and disadvantages of the property and neither is acting under any compulsion to buy or sell, as determined by a state certified appraiser, who is qualified to appraise the property. Claims against the state or a political subdivision shall remain subject to the requirements of chapter 9, title 6, Idaho Code, and damages against the state or a political subdivision shall be the amount set forth in chapter 9, title 6, Idaho Code, as limited in this subsection.

History.

1972, ch. 401, § 2, p. 1164; am. 2013, ch. 62,
§ 3, p. 138.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 62, designated the extant provisions of the section as subsection (1) and added subsection (2).

Legislative Intent.

Section 1 of S.L. 2013, ch. 62 provided: "Legislative Intent. The Legislature finds that generally, real and personal property damage caused by forest and range fire is measured by the diminution of fair market value of the real and personal property. In Idaho, restoration damages may be awarded if there is a reason personal to the owner for restoring the forest or range land to its original condition.

"The Legislature further finds that in other jurisdictions, large forest or range land owners have sought and have been awarded double recovery, the diminution of fair market value and restoration costs, for the damage to forest or range land caused by forest or range fires. The awards include intangible environmental damages that are clearly speculative

in their nature, and should not be recoverable. This legislation clarifies that for real and personal property damage caused by forest or range fire, recovery is limited to reasonable suppression costs, economic damages and either the diminution of fair market value of the real and personal property, or the actual and tangible costs for restoration, not intangible environmental damages, as a result of the forest or range fire."

Compiler's Notes.

Section 4 of S.L. 2013, ch. 62 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 5 of S.L. 2013 declared an emergency. Approved March 12, 2013.

CHAPTER 7

FOREST, WILDLIFE AND RANGE EXPERIMENT STATION

SECTION.

38-715. Rangeland center created — Director — Duties — Control by state board of regents — Powers

SECTION.

and duties of rangeland center — Partner advisory council.
38-716. Rangeland center act.

38-715. Rangeland center created — Director — Duties — Control by state board of regents — Powers and duties of rangeland center — Partner advisory council. — (1) There is hereby created and established in the university of Idaho, a rangeland center, for the purpose of creating a new model for interdisciplinary research, education and outreach to fulfill the university's land grant mission. The center shall be comprised of researchers and educators from the college of natural resources, the college of agricultural and life sciences, the university of Idaho cooperative extension and other colleges or units in the university of Idaho, and other research agencies, colleges and universities with expertise in, but not limited to, grazing, rangeland ecology, entomology, soil science, economics, rural sociology, fish and wildlife management, invasive plant management, forage production, animal science, restoration and the use of spatial technologies to understand rangelands.

(2) The fiscal and human resources of the rangeland center shall be under the management of a director who shall hold an academic appointment in a department within the university of Idaho, or joint appointment in departments.

(a) The director shall have the following duties:

- (i) To report to the deans of the college of natural resources and the college of agricultural and life sciences and the director of the university of Idaho cooperative extension on rangeland center activities and accomplishments annually and when otherwise requested;
 - (ii) To work closely with the partner advisory council to identify and set priorities for the rangeland center;
 - (iii) To seek opportunities, secure resources and promote the work of the rangeland center faculty and staff;
 - (iv) To provide input for annual evaluation of faculty members who have a portion of their position description dedicated to the rangeland center;
 - (v) To supervise staff assigned to the rangeland center; and
 - (vi) To oversee budgets secured by and assigned to the rangeland center.
- (b) The rangeland center shall be under the control of the state board of regents of the university of Idaho through the deans of the colleges of natural resources and agricultural and life sciences who shall have the power and whose duty it shall be to appoint or designate the director and such faculty and staff as may be necessary, and to fix their compensation.
- (3) The rangeland center shall:
- (a) Empower researchers and educators at the university of Idaho who strive to create insight and foster understanding for the stewardship and management of rangelands;
 - (b) Work in union with external partners to focus research, education and outreach to produce solutions that are responsive and relevant to contemporary rangeland issues;
 - (c) Engage partners and stakeholders to jointly provide leadership for discovery of new knowledge and create science-based solutions for rangeland management;
 - (d) Provide objective and relevant rangeland information for individuals, organizations and communities;
 - (e) Offer learning opportunities for land stewardship;
 - (f) Establish a partner advisory council for the purpose of setting strategic goals for the rangeland center, assessing accomplishments relative to the strategic goals, conveying resources and opportunities to accomplish the work of the center and any further purposes as determined; and
 - (g) Encourage and facilitate applied research to address specific issues and management challenges that arise on Idaho's diverse rangelands.
- (4) The partner advisory council shall consist of ten (10) to fifteen (15) members, with a variety of backgrounds, interests and expertise related to rangelands. The initial council shall be appointed by the director of the rangeland center. The council shall establish guidelines for decision making and shall appoint one (1) of its members as chairman who shall thereafter appoint additional members in consultation with the director, not to exceed fifteen (15) members. The council shall meet at a minimum annually and shall conduct annual and five (5) year reviews of the rangeland center and its performance based on strategic goals as established by the council. Such reviews shall be made available to the deans of the college of natural

resources and the college of agricultural and life sciences, the director of the university of Idaho cooperative extension, rangeland center faculty members, advisory council members, and their respective stakeholders and constituents.

History.

I.C., § 38-715, as added by 2012, ch. 144,
§ 1, p. 379.

STATUTORY NOTES

Cross References.

Board of regents, § 33-2802.

Compiler's Notes.

Section 3 of S.L. 2012, ch. 144 provided:
"Severability. The provisions of this act are

hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

38-716. Rangeland center act. — This act shall be known and may be cited as the "Rangeland Center Act."

History.

I.C., § 38-716, as added by 2012, ch. 144,
§ 2, p. 379.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 2012, ch. 144, which is compiled as §§ 38-715 and this section.

Section 3 of S.L. 2012, ch. 144 provided:
"Severability. The provisions of this act are

hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

CHAPTER 8

FLOATING TIMBER

SECTION.

38-804. Application of proceeds.

38-805. Rejection of claimant's right — Disposition of proceeds.

38-804. Application of proceeds. — When sold, the proceeds of the timber must be applied, first, to the payment of the charges of the sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representative or assigns, on the production of satisfactory proof of ownership to the magistrate judge, and on his order therefor made within one (1) year after its receipt.

History.

R.S., § 833; reen. R.C. & C.L., § 870; C.S., § 1298; I.C.A., § 37-304; am. 2012, ch. 20,
§ 19, p. 66.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 20, substi-

tuted "magistrate judge" for "probate judge" near the end of the section.

38-805. Rejection of claimant's right — Disposition of proceeds.

— The rejection by the magistrate judge of any claimant's right to such proceeds is conclusive, unless, within six (6) months thereafter, he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the county treasurer, be placed in the common school fund of the county.

History.

R.S., § 834; reen. R.C. & C.L., § 871; C.S.,

§ 1299; I.C.A., § 37-305; am. 2012, ch. 20, § 20, p. 66.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 20, substi-

tuted "magistrate judge" for "probate judge" near the beginning of the section.

CHAPTER 12**LOG SCALING**

SECTION.

38-1203. Idaho board of scaling practices —
Members — Terms.

38-1203. Idaho board of scaling practices — Members — Terms. —

(1) A board to be known as the "Idaho board of scaling practices" is hereby created in the department of lands. It shall consist of the director of the department of lands and six (6) members appointed by the governor from among nominees representing the following segments of the timber industry of Idaho: manufacturing, logging and transportation, nonindustrial private forest landowners and industrial forest landowners. Provided that:

(a) Two (2) board members shall be appointed from nominees provided to the governor by companies processing scaled logs within the state of Idaho to represent the interests of the manufacturing segment of the timber industry, one (1) member from companies consuming less than one hundred million (100,000,000) board feet of logs annually and one (1) member from companies consuming more than one hundred million (100,000,000) board feet of logs annually.

(b) Two (2) board members shall be appointed from nominees provided to the governor by the associated logging contractors of Idaho, inc., to represent the interests of the logging and transportation segment of the timber industry, one (1) member from north of the Salmon river and one (1) member from south of the Salmon river.

(c) One (1) board member shall be appointed from nominees provided to the governor by the Idaho forest owners association to represent the interests of nonindustrial private forest landowners throughout the state. The person representing nonindustrial private forest landowners shall own not more than fifty thousand (50,000) acres of private forest land and

shall not own or control a forest products manufacturing facility within the state. In choosing this person, the governor shall give preference to persons with a demonstrated history of selling timber or logs to a variety of purchasers and who have scaling or forest management experience.

(d) One (1) board member shall be appointed from nominees provided to the governor by timber growing landowners holding more than fifty thousand (50,000) acres of forest land within the state of Idaho, to represent the interests of industrial forest landowners.

(e) No person or legal entity representing the interests of manufacturing or industrial forest landowners shall have more than one (1) board seat at the same time.

(2) The members of the board shall have the qualifications required by section 38-1204, Idaho Code. The members of the board shall be appointed for a three (3) year term. Each member of the board shall take, subscribe and file the oath required by sections 59-401 through 59-408, Idaho Code, before entering upon the duties of his office. On the expiration of the term of any member, his successor shall be appointed in like manner by the governor for a term of three (3) years and unexpired terms shall be filled for the unexpired balance of the term. Upon expiration of the term of office, a member shall continue to serve until a successor shall have been appointed.

History.

1969, ch. 91, § 3, p. 305; am. 1972, ch. 114, § 1, p. 229; am. 1974, ch. 17, § 20, p. 308; am.

1986, ch. 330, § 1, p. 812; am. 1999, ch. 120, § 1, p. 357; am. 2008, ch. 200, § 1, p. 645; am. 2012, ch. 204, § 1, p. 544.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 204, divided the existing provisions into subsections (1) and (2); rewrote subsection (1), increasing the board size from 5 to 6 members; and added the last sentence in subsection (2).

Effective Dates.

Section 2 of S.L. 2012, ch. 204, declared an emergency. Approved April 3, 2012.

CHAPTER 13

FOREST PRACTICES ACT

38-1302. Policy of the state — Purpose of act.

RESEARCH REFERENCES

Idaho Law Review. — “Tough Law” Getting Tougher: A Proposal for Permitting Idaho’s Logging Road Stormwater Point Sources

After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1306. Notification of forest practice.

RESEARCH REFERENCES

Idaho Law Review. — “Tough Law” Getting Tougher: A Proposal for Permitting Idaho’s Logging Road Stormwater Point Sources

After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1307. Notice of violation — Cease and repair order — Stop work order — Enforcement procedures — Remedies of the operator.

RESEARCH REFERENCES

Idaho Law Review. — “Tough Law” Getting Tougher: A Proposal for Permitting Idaho’s Logging Road Stormwater Point Sources

After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1309. Duty of purchaser.

RESEARCH REFERENCES

Idaho Law Review. — “Tough Law” Getting Tougher: A Proposal for Permitting Idaho’s Logging Road Stormwater Point Sources

After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

38-1311. Enforcement of act.

RESEARCH REFERENCES

Idaho Law Review. — “Tough Law” Getting Tougher: A Proposal for Permitting Idaho’s Logging Road Stormwater Point Sources

After *Northwest Environmental Defense Center v. Brown*, Case Note. 48 Idaho L. Rev. 467 (2012).

TITLE 39

HEALTH AND SAFETY

CHAPTER.

1. ENVIRONMENTAL QUALITY — HEALTH, §§ 39-116B, 39-173, 39-174.
2. VITAL STATISTICS, § 39-258.
3. ALCOHOLISM AND INTOXICATION TREATMENT ACT, §§ 39-302, 39-303A, 39-304.
6. CONTROL OF VENEREAL DISEASES, §§ 39-601, 39-604.
11. BASIC DAY CARE LICENSE, § 39-1113.
13. HOSPITAL LICENSES AND INSPECTION, §§ 39-1332, 39-1392g, 39-1394.
19. FIRE ESCAPES AND DOORS, §§ 39-1901, 39-1902, 39-1904, 39-1905.

CHAPTER.

26. FIREWORKS, § 39-2611.
30. RADIATION AND NUCLEAR MATERIAL, § 39-3029.
34. REVISED UNIFORM ANATOMICAL GIFT ACT, § 39-3413.
36. WATER QUALITY, §§ 39-3602, 39-3604, 39-3605, 39-3606, 39-3607, 39-3609.
41. IDAHO BUILDING CODE ACT, §§ 39-4106, 39-4115.
44. HAZARDOUS WASTE MANAGEMENT, § 39-4432.

CHAPTER 1

ENVIRONMENTAL QUALITY — HEALTH

SECTION.

- 39-116B. Vehicle inspection and maintenance program.

SECTION.

- 39-173. Committee — Members — Terms.
39-174. Committee duties — Meetings.

39-116B. Vehicle inspection and maintenance program. — (1) The board shall initiate rulemaking to provide for the implementation of a motor vehicle inspection and maintenance program to regulate and ensure control of the air pollutants and emissions from registered motor vehicles in an attainment or unclassified area as designated by the United States environmental protection agency, not otherwise exempted in subsection (7) of this section, if the director determines the following conditions are met:

- (a) An airshed, as defined by the department, within a metropolitan statistical area, as defined by the United States office of management and budget, has ambient concentration design values equal to or above eighty-five percent (85%) of a national ambient air quality standard, as defined by the United States environmental protection agency, for three (3) consecutive years starting with the 2005 design value; and
- (b) The department determines air pollutants from motor vehicles constitute one (1) of the top two (2) emission sources contributing to the design value of eighty-five percent (85%).

(2) In the event both of the conditions in subsection (1) of this section are met, the board shall establish by rule minimum standards for an inspection and maintenance program for registered motor vehicles, not otherwise exempted in subsection (7) of this section, which shall provide for:

- (a) Counties and cities within the airshed that will be subject to the motor vehicle inspection and maintenance program;
- (b) The requirements for licensing authorized inspection stations and technicians;

- (c) The frequency with which inspections shall be required, provided that inspections shall occur no more than once every two (2) years;
 - (d) The procedures under which authorized inspection stations and technicians inspect motor vehicles and issue evidence of compliance;
 - (e) The criteria under which it is to be determined that a motor vehicle is eligible for a certificate of compliance;
 - (f) The parameters and diagnostic equipment necessary to perform the required inspection. The rules shall ensure that the equipment complies with any applicable standards of the United States environmental protection agency;
 - (g) A fee, bond or insurance which is necessary to carry out the provisions of this section and to fund an air quality public awareness and outreach program. The fee for a motor vehicle inspection shall not exceed twenty dollars (\$20.00) per vehicle;
 - (h) The issuance of a pamphlet for distribution to owners of motor vehicles explaining the reasons for and the methods of the inspections; and
 - (i) The granting of a waiver from the minimum standards as provided by rule, which may be based on model year, fuel, size, or other factors, which shall include, but not be limited to, a repair waiver and a hardship waiver.
- (3) In the event both of the conditions in subsection (1) of this section are met, the director shall attempt to enter into a joint exercise of powers agreement under sections 67-2326 through 67-2333, Idaho Code, with the board of county commissioners of each county within the airshed in which a motor vehicle inspection and maintenance program is required under this section, and the councils of incorporated cities within those counties, to develop a standardized inspection and maintenance program. If the board of county commissioners or the councils of incorporated cities within those counties choose not to enter into a joint exercise of powers agreement with the director, then within one hundred twenty (120) days of the director's written request to enter into such an agreement, the board of county commissioners or the councils of incorporated cities may notify the department that it will implement an alternative motor vehicle emission control strategy that will result in emissions reductions equivalent to that of a vehicle emission inspection program. If the department determines the emissions reductions of the alternative motor vehicle emission control strategy are not equivalent, or no equivalent reductions are proposed, the department or its designee shall implement the motor vehicle inspection and maintenance program required pursuant to the provisions of this section.
- (4) The Idaho transportation department shall revoke the registration of any motor vehicle identified by the department or its designee, or any city or county administering a program established under the provisions of this section as having failed to comply with such motor vehicle inspection and maintenance program, except that no vehicle shall be identified to the Idaho transportation department unless:
- (a) The department or its designee, or the city or county certifies to the Idaho transportation department that the owner of the motor vehicle has

been given notice and had the opportunity for a hearing concerning the program and has exhausted all remedies and appeals from any determination made at such hearing; and

(b) The department or its designee, or the city or county reimburses the Idaho transportation department for all direct costs associated with the registration revocation procedure.

Any vehicle registration that has been revoked pursuant to the provisions of this section that is found to be in compliance with current emissions standards shall have the registration reinstated without charge.

(5) The department shall annually review the results of the vehicle inspection and maintenance program. The review shall include, among other things, an estimate of the emission reduction obtained from the number of vehicles that initially fail the test and then pass after maintenance.

(6) Every five (5) years beginning in 2013, the director shall review the air quality data and make recommendations to the legislature for its determination whether a program initially established pursuant to the provisions of this section should be continued, modified or terminated.

(7) Electric or hybrid motor vehicles, new motor vehicles less than five (5) years old, classic automobiles, motorized farm equipment and registered motor vehicles engaged solely in the business of agriculture, shall be exempt from any motor vehicle inspection and maintenance program established pursuant to the provisions of this section.

History.

I.C., § 39-116B, as added by 2008, ch. 368, § 1, p. 1007; am. 2011, ch. 329, § 1, p. 964; am. 2012, ch. 252, § 1, p. 695.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 252, added “which shall include, but not be limited to, a repair waiver and a hardship waiver” at the end of paragraph (2)(i); and, in subsection (6),

substituted “in 2013” for “with the implementation of the program” and substituted “make recommendations to the legislature for its determination whether” for “determine whether.”

39-173. Committee — Members — Terms. — As needed, to fulfill the duties described in section 39-174, Idaho Code, the director may appoint a committee that consists of seven (7) individuals and includes:

(1) One (1) representative of the department of environmental quality, who will provide administrative and other support to the committee.

(2) Two (2) representatives of the public health districts which have mill yard or wood debris within their districts.

(3) Two (2) representatives from industries generating wood or mill yard debris.

(4) Two (2) members with demonstrated technical knowledge important to the work of the committee.

Committee members shall be appointed to serve three (3) year terms. No member may serve more than two (2) full terms. Members serve at the pleasure of the director.

Members of the committee shall serve without compensation pursuant to section 59-509(a), Idaho Code.

History. ch. 204, § 3, p. 627; am. and redesign. 2001, ch. 103, § 17, p. 253; am. 2013, ch. 16, § 1, p. 26.
I.C., § [39-173] 39-168, as added by 1996,

STATUTORY NOTES

Cross References. the introductory paragraph, which formerly
Department of environmental quality, read: "The director shall appoint a committee
§ 39-104. to develop guidance on the use, storage, management and disposal of mill yard or wood debris. This committee shall consist of seven (7) individuals and shall include."

Amendments.
The 2013 amendment, by ch. 16, rewrote

39-174. Committee duties — Meetings. — The committee's duties shall include:

- (1) Developing a manual providing guidance for the use, storage, management and disposal of wood or mill yard debris to prevent public nuisances and minimize or prevent harmful environmental impacts. Guidance provided by the manual may be incorporated or adopted by reference in the rules of the department or other appropriate state agencies.
- (2) Considering and developing specific solutions to unforeseen wood or mill yard debris use, storage, management or disposal as needed.
- (3) Developing and sharing knowledge related to the use, storage, management and disposal of wood or mill yard debris including ways to constructively use or reclaim the debris.
- (4) Making recommendations for any necessary permits, rules or legislation related to the use, storage, management or disposal of wood or mill yard debris.

The committee shall meet on an as needed basis to implement the purpose of sections 39-171 through 39-174, Idaho Code. A committee member or member of the public may request a meeting by sending a written request to the department describing the reason for the meeting, or the department may schedule a meeting at the discretion of the director. Upon receiving the request, the department shall contact all committee members and arrange a time and place most convenient to the majority of the members. Meetings may be conducted using telephonic devices or other methods that allow adequate communication among members.

History. ch. 204, § 4, p. 627; am. and redesign. 2001, ch. 103, § 18, p. 253; am. 2013, ch. 16, § 2, p. 26.
I.C., § [39-174] 39-169, as added by 1996,

STATUTORY NOTES

Amendments. committee shall meet at least two (2) times a year at a time and place most convenient to the majority of members."
The 2013 amendment, by ch. 16, rewrote the last paragraph, which formerly read: "The

CHAPTER 2

VITAL STATISTICS

VITAL STATISTICS ACT

SECTION.

39-258. Adoption of persons born in Idaho —
 New birth certificate issued to
 replace original certificate —
 Procedure — Adoption pro-

ceedings not open to inspection with certain exceptions —
 Duties of the clerks of courts
 issuing adoption decrees —
 Duties of state registrar of vital statistics.

VITAL STATISTICS ACT

39-258. Adoption of persons born in Idaho — New birth certificate issued to replace original certificate — Procedure — Adoption proceedings not open to inspection with certain exceptions — Duties of the clerks of courts issuing adoption decrees — Duties of state registrar of vital statistics. — (a) Whenever a final decree of adoption, issued by an Idaho court, declares a person born in Idaho to be adopted by someone other than his or her natural parents, the court shall require the preparation of a report (denominated as a certificate in accordance with Idaho court rules) of adoption on a form prescribed and furnished by the state registrar. The report shall include such facts as are necessary to locate and identify the certificate of birth of the person adopted; shall provide information necessary to establish a new certificate of birth for the person adopted; and shall identify the order of adoption and be certified by the clerk of the court.

(b) Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The provision of such information shall be prerequisite to the issuance of a final decree in the matter of the court.

(c) The report of adoption shall, within fifteen (15) days after becoming final, be recorded by the clerk of the court with the vital statistics unit in the state department of health and welfare.

(d) If a court of some other state issued a decree or report of adoption of a person actually born in Idaho, the certified copy or report may be similarly filed by the person involved or by the adoptive parents. Failure to file certified copies or reports of said decrees within said period of time, however, shall not bar issuance of a new birth certificate as hereinafter provided. This copy of said decree or report shall be filed with and remain a part of the records of the vital statistics unit.

(e) Upon receipt by the vital statistics unit of the certified report of adoption, a new certificate of birth shall be issued (but only in cases where such person's birth is already recorded with the vital statistics unit) bearing among other things the name of the person adopted, as shown in the report of adoption, except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person. No such birth certificate shall have reference to the adoption of said person. Such birth certificate shall supplant and constitute

a replacement of any birth certificate previously issued for said person and shall be the only birth certificate open to public inspection.

Provided however, upon good cause shown and the affidavit of the adoptive parents that a diligent search has been made, but no certificate of birth for the adoptive child can be located, the magistrate judge may order the adoptive child examined, at the expense of the adoptive parents, by a doctor of medicine licensed by the state of Idaho. The examination will be conducted pursuant to rules promulgated by the state board of health and welfare for the purpose of determining those matters required for the issuance of an original birth certificate. Upon the examination of the doctor made pursuant to the rules of the state board of health and welfare, the court may order the vital statistics unit to issue an original birth certificate for the adoptive child based upon those facts determined by the examination and included in the court's order. In such case a certified copy of the court order shall be provided to the vital statistics unit.

(f) In respect to form and nature of contents, such a new birth certificate shall be identical with a birth certificate issued to natural parents for the birth of a child, except that the adoptive parents shall be shown as parents and the adopted person shall have the name assigned by the decree of adoption as shown on the report of adoption. In a case where a single person adopts another person, any new birth certificate may designate the adopting parent as adoptive.

(g) Whenever an adoption decree is amended, annulled or rescinded, the clerk of the court shall forward a certified copy of the amendment, annulment or rescindment to the vital statistics unit in accordance with the time provisions in subsection (c) of this section. Unless otherwise directed by the court, the vital statistics unit shall amend the certificate of birth upon receipt of a certified copy of an amended decree of adoption. Upon receipt of a certified copy of a decree of annulment or rescindment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of record of this state.

(h) All records and information specified in this section other than a new birth certificate issued hereunder, and all records, files and information of any court in this state relating to adoption proceedings, shall not be open to inspection except as provided in section 39-259A, Idaho Code, or upon the order of a court of record of this state; provided however, that the provisions of section 16-1616, Idaho Code, to the contrary notwithstanding, any magistrate judge may furnish a certified copy of a decree of adoption to any duly authorized agency of the United States or the state of Idaho without procuring any prior court order therefor.

History.

I.C., § 39-218, as replaced by 1959, ch. 104, § 1, p. 221; am. 1965, ch. 208, § 1, p. 477; am. 1974, ch. 23, § 60, p. 633; am. and redesisg.

1983, ch. 7, § 18, p. 23; am. 1985, ch. 59, § 2, p. 112; am. 2005, ch. 391, § 53, p. 192; am. 2012, ch. 20, § 21, p. 66.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 20, substituted “magistrate judge” for “probate judge” in the first sentence of the second paragraph

in subsection (e) and substituted “magistrate judge” for “probate court, or the judge thereof” near the end of subsection (h).

CHAPTER 3**ALCOHOLISM AND INTOXICATION TREATMENT ACT**

SECTION.

39-302. Definitions.

39-303A. Regional advisory committees.

SECTION.

39-304. Comprehensive program for treatment.

39-302. Definitions. — As used in this chapter, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) “Addiction” or “alcoholism” means a primary, chronic, neurobiological disease with genetic, psychosocial and environmental factors influencing its development and manifestations. It is characterized by behaviors that include one (1) or more of the following: impaired control over drug or alcohol use, compulsive use, continued use despite harm, and craving.

(2) “Alcoholic” means a person who has the disease of alcoholism, which is characterized by behaviors that include one (1) or more of the following: impaired control over alcohol use, compulsive use, continued use despite harm, and craving.

(3) “Approved private treatment facility” means a private agency meeting the standards prescribed in section 39-305(1), Idaho Code, and approved under the provisions of section 39-305(3), Idaho Code, and rules promulgated by the board of health and welfare pursuant to this chapter.

(4) “Approved public treatment facility” means a treatment agency operating under the provisions of this chapter through a contract with the department of health and welfare pursuant to section 39-304(7), Idaho Code, and meeting the standards prescribed in section 39-305(1), Idaho Code, and approved pursuant to section 39-305(3), Idaho Code, and rules promulgated by the board of health and welfare pursuant to this chapter.

(5) “Department” means the Idaho department of health and welfare.

(6) “Director” means the director of the Idaho department of health and welfare.

(7) “Drug addict” means a person who has the disease of addiction, which is characterized by behaviors that include one (1) or more of the following: impaired control over drug use, compulsive use, continued use despite harm, and craving.

(8) “Incapacitated by alcohol or drugs” means that a person, as a result of the use of alcohol or drugs, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(9) “Incompetent person” means a person who has been adjudged incompetent by an appropriate court within this state.

(10) “Intoxicated person” means a person whose mental or physical functioning is substantially impaired as a result of the use of drugs or alcohol.

(11) “Recovery support services” means those ancillary, nonclinical services needed for a client to maintain substance abuse or addiction recovery. These services may include transportation, childcare, drug testing, safe and sober housing and care management.

(12) “Substance abuse” means the misuse or excessive use of alcohol or other drugs or substances.

(13) “Treatment” means the broad range of emergency, outpatient, intensive outpatient, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons and/or drug addicts.

History.

I.C., § 39-302, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1987, ch. 289, § 2, p.

610; am. 2006, ch. 407, § 1, p. 1232; am. 2008, ch. 94, § 1, p. 259; am. 2012, ch. 107, § 3, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, deleted former subsection (10), the definition of “in-

teragency committee,” and renumbered the subsequent subsections accordingly.

39-303A. Regional advisory committees. — Regional advisory committees that address substance abuse issues shall be established by the department of health and welfare. The regional advisory committees shall be composed of regional directors of the department or their designees, regional substance abuse program staff and representatives of other appropriate public and private agencies. Members shall be appointed by the respective regional directors for terms determined by the regional director. The committees shall meet at least quarterly at the call of the chair, who shall also be appointed by the regional director. The committees shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and drug addiction and shall act as liaison among the departments engaged in activities affecting alcoholics and intoxicated persons.

History.

I.C., § 39-303A, as added by 1989, ch. 282,

§ 2, p. 691; am. 2006, ch. 407, § 4, p. 1232; am. 2012, ch. 107, § 4, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, deleted the “(1)” designation from the first paragraph; and deleted former subsection (2), which read: “The chairpersons of each regional advisory committee shall collectively meet at least annually and elect one (1) of its members to serve as the regional advisory committees’ representative on the interagency committee.

Each regional advisory committee shall provide to the regional advisory committees’ representative, before each regular meeting of the interagency committee, a report addressing local substance abuse program needs and other information as it pertains to the treatment and prevention of alcoholism and other drug addiction or as required by the chairperson of the interagency committee. The re-

gional advisory committees' representative shall be responsible for communicating information from these reports at each regular meeting of the interagency committee."

39-304. Comprehensive program for treatment. — The Idaho department of health and welfare is hereby designated as the state substance abuse authority.

(1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons and drug addicts.

(2) The program shall include:

(a) Emergency detoxification treatment and medical treatment directly related thereto provided by a facility affiliated with or part of the medical service of a general hospital;

(b) Inpatient treatment;

(c) Intensive outpatient treatment;

(d) Outpatient treatment;

(e) Community detoxification provided by an approved facility; and

(f) Recovery support services.

(3) The department shall provide for adequate and appropriate treatment for persons admitted pursuant to section 39-307, Idaho Code. Treatment shall not be provided at a correctional institution except for inmates.

(4) The department shall maintain, supervise, and control all facilities operated by it. The administrator of each such facility shall make an annual report of its activities to the director in the form and manner the director specifies.

(5) All appropriate public and private resources shall be coordinated with and utilized in the program whenever possible.

(6) The department shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(7) The department may contract for the use of any facility as an approved public treatment facility if the director considers this to be an effective and economical course to follow.

(8) The program shall include an individualized treatment plan prepared and maintained for each client.

History.

I.C., § 39-304, as added by S.L. 1975, ch. 149, § 1, p. 376; am. 1987, ch. 289, § 4, p. 610; am. 1989, ch. 282, § 3, p. 691; am. 2006,

ch. 407, § 5, p. 1232; am. 2007, ch. 69, § 3, p. 183; am. 2008, ch. 94, § 2, p. 260; am. 2012, ch. 107, § 5, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, deleted the former second sentence in subsection (1),

which read: "The interagency committee shall direct the department in the establishment and in the content of this program."

CHAPTER 6

CONTROL OF VENEREAL DISEASES

SECTION.

39-601. Venereal diseases enumerated.

39-604. Confined and imprisoned persons — Examination, treatment, and quarantine — Victims of sex-

ual offenses — Access to offenders' test results, testing for HIV, counseling and referral services.

39-601. Venereal diseases enumerated. — Syphilis, gonorrhea, human immunodeficiency virus (HIV), chlamydia and hepatitis B virus (HBV), hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable and dangerous to public health; and it shall be unlawful for anyone infected with these diseases or any of them to knowingly expose another person to the infection of such diseases.

History.

1921, ch. 200, §§ 1, 6, p. 406; I.C.A., § 38-501; am. 1945, ch. 52, § 1, p. 67; am. 1986, ch.

70, § 1, p. 195; am. 1988, ch. 45, § 1, p. 50; am. 1990, ch. 143, § 1, p. 322; am. 2012, ch. 311, § 1, p. 858.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 311, substituted "Syphilis, gonorrhea, human immunodeficiency virus (HIV), chlamydia and hepatitis B virus (HBV)" for "Syphilis, gonorrhea, acquired immunodeficiency syndrome

(AIDS), AIDS related complexes (ARC), other manifestations of HIV (human immunodeficiency virus) infections, chancroid and hepatitis B virus (HBV) infections" at the beginning of the section.

39-604. Confined and imprisoned persons — Examination, treatment, and quarantine — Victims of sexual offenses — Access to offenders' test results, testing for HIV, counseling and referral services. — (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again upon the offender's request before release, and, if infected, treated for the diseases enumerated in section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. Nothing contained in this section shall be construed to impose upon any state prison facility an obligation to continue to treat a person who tested positive for any disease enumerated in section 39-601, Idaho Code, or be financially responsible for such treatment after the person is released from the state prison facility.

(2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated in section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities or the jailer, been exposed to a disease enumerated in section 39-601, Idaho Code.

(3) All persons who are charged with any sex offense in which body fluid, as defined in this chapter, has likely been transmitted to another shall be tested for the human immunodeficiency virus (HIV). At the request of the victim or parent, guardian or legal custodian of a minor victim, such test shall be administered not later than forty-eight (48) hours after the date on which the information or indictment is presented.

(4) All persons, including juveniles, who are charged with sex offenses, prostitution, any crime in which body fluid has likely been transmitted to another, or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in section 39-601, Idaho Code, and for hepatitis C virus.

(5) All persons who are charged with any crime involving the use of injectable drugs shall be tested for the presence of HIV antibodies or antigens, for hepatitis C virus and for hepatitis B virus.

(6) If a person is tested as required in subsection (3), (4) or (5) of this section, the results of the test shall be revealed to the court. The court shall release the results of the test to the victim(s), or if the victim(s) is a minor, to the minor's parent, guardian or legal custodian. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim(s) of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim(s) by the district health departments at no charge to the victim(s). Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim(s), or if the victim(s) is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim(s) or the victim's parent, guardian, or legal custodian, aware of the services to which the victim(s) is entitled as described herein.

(7) Responsibility for the examination, testing and treatment of persons confined in county or city jails shall be vested in the county or city that operates the jail. The county or city may contract with the district health departments or make other arrangements for the examination, testing and treatment services. The district health department or other provider may charge and collect for the costs of such examination and treatment, as follows:

(a) When the prisoner is a convicted felon awaiting transfer to the board of correction, or when the prisoner is a convicted felon being confined in jail pursuant to a contract with the board of correction, the board of correction shall reimburse such costs;

(b) When the prisoner is awaiting trial after an arrest by any state officer, the state agency employing such arresting officer shall reimburse such costs;

(c) When the prisoner is being held for any other authority or jurisdiction, including another state, the authority or jurisdiction responsible shall reimburse such costs unless otherwise provided for by contract.

History.

1921, ch. 200, § 4, p. 406; I.C.A., § 38-504; am. 1974, ch. 23, § 96, p. 633; am. 1988, ch. 45, § 3, p. 50; am. 1989, ch. 220, § 1, p. 536; am. 1990, ch. 310, § 1, p. 850; am. 1993, ch.

19, § 1, p. 71; am. 1994, ch. 408, § 1, p. 1278; am. 1999, ch. 323, § 1, p. 830; am. 2011, ch. 70, § 1, p. 148; am. 2012, ch. 311, § 2, p. 858; am. 2013, ch. 209, § 1, p. 498.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 311, substituted “or the jailer” for “and the jailer” near the end of subsection (2); deleted “drug related charges” following “sex offenses” near the beginning of subsection (4); and substituted “involving the use of injectable drugs” for “in which body fluid as defined in this chapter has likely been transmitted to another” in subsection (5).

The 2013 amendment, by ch. 209, in subsection (1), inserted “upon the offender’s request” in the first sentence and added the last sentence.

Compiler’s Notes.

The abbreviation and the letter “s” enclosed in parentheses so appeared in the law as enacted.

CHAPTER 11

BASIC DAY CARE LICENSE

SECTION.

39-1113. Denial, suspension or revocation of license.

39-1113. Denial, suspension or revocation of license. — (1) A license may be denied, suspended or revoked by the department if the department finds that the applicant or licensee does not comply with the provisions of this chapter.

(2) No person who pleads guilty to, has been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child including the following offenses or a similar provision in another jurisdiction, shall be eligible for a license under the provisions of this chapter:

- (a) Felony injury of a child, section 18-1501, Idaho Code.
- (b) The sexual abuse of a child under sixteen years of age, section 18-1506, Idaho Code.
- (c) The ritualized abuse of a child under eighteen years of age, section 18-1506A, Idaho Code.
- (d) The sexual exploitation of a child, section 18-1507, Idaho Code.
- (e) Sexual abuse of a child under the age of sixteen years, section 18-1506, Idaho Code.
- (f) Lewd conduct with a child under the age of sixteen years, section 18-1508, Idaho Code.
- (g) The sale or barter of a child for adoption or other purposes, section 18-1511, Idaho Code.
- (h) Murder in any degree, section 18-4001 or 18-4003, Idaho Code.
- (i) Assault with intent to murder, section 18-4015, Idaho Code.
- (j) Voluntary manslaughter, section 18-4006, Idaho Code.
- (k) Rape, section 18-6101 or 18-6108, Idaho Code.
- (l) Incest, section 18-6602, Idaho Code.

- (m) Forcible sexual penetration by use of foreign object, section 18-6608, Idaho Code.
- (n) Abuse, neglect or exploitation of a vulnerable adult, section 18-1505, Idaho Code.
- (o) Aggravated, first degree, second degree and third degree arson, sections 18-801 through 18-805, Idaho Code.
- (p) Crimes against nature, section 18-6605, Idaho Code.
- (q) Kidnapping, sections 18-4501 through 18-4503, Idaho Code.
- (r) Mayhem, section 18-5001, Idaho Code.
- (s) Poisoning, section 18-4014 or 18-5501, Idaho Code.
- (t) Robbery, section 18-6501, Idaho Code.
- (u) Stalking in the first degree, section 18-7905, Idaho Code.
- (v) Video voyeurism, section 18-6609, Idaho Code.
- (w) Enticing of children, section 18-1509 or 18-1509A, Idaho Code.
- (x) Inducing individuals under eighteen years of age into prostitution, section 18-5609, Idaho Code.
- (y) Inducing person under eighteen years of age to patronize a prostitute, section 18-5611, Idaho Code.
- (z) Any felony punishable by death or life imprisonment.
- (aa) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.
- (3) No person who has pleaded guilty to, been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child, including the following offenses or a similar provision in another jurisdiction shall be eligible for a license for a period of five (5) years under the provisions of this chapter.
 - (a) Aggravated assault, section 18-905, Idaho Code.
 - (b) Aggravated battery, section 18-907(1), Idaho Code.
 - (c) Burglary, section 18-1401, Idaho Code.
 - (d) Felony theft, sections 18-2403 and 18-2407(1), Idaho Code.
 - (e) Forgery of a financial transaction card, section 18-3123, Idaho Code.
 - (f) Fraudulent use of a financial transaction card or number, section 18-3124, Idaho Code.
 - (g) Forgery or counterfeiting, chapter 36, title 18, Idaho Code.
 - (h) Misappropriation of personal identifying information, section 18-3126, Idaho Code.
 - (i) Insurance fraud, section 41-293, Idaho Code.
 - (j) Damage to or destruction of insured property, section 41-294, Idaho Code.
 - (k) Public assistance fraud, section 56-227, Idaho Code.
 - (l) Provider fraud, section 56-227A, Idaho Code.
 - (m) Attempted strangulation, section 18-923, Idaho Code.
 - (n) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.
 - (o) Misdemeanor injury to a child, section 18-1501(2), Idaho Code.
- (4) A daycare facility license may be denied, suspended or revoked by the department if the department finds that the daycare facility is not in

compliance with the standards provided for in this chapter or criminal activity that threatens the health or safety of a child.

(5) A daycare facility license or privilege to operate a family daycare home shall be denied or revoked if a registered sex offender resides on the premises where daycare services are provided.

(6) The denial, suspension or revocation of a license under this chapter may be appealed to the district court of the county in which the affected daycare facility is located and the appeal shall be heard de novo in the district court.

History.

I.C., § 39-1113, as added by 1987, ch. 56, § 1, p. 92; am. 1990, ch. 271, § 1, p. 765; am.

1992, ch. 90, § 3, p. 279; am. 2009, ch. 295, § 13, p. 873; am. 2012, ch. 269, § 8, p. 751.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 269, deleted former paragraph 2(t), which read, "Posses-

sion of sexually exploitative material, section 18-1507A, Idaho Code" and redesignated the subsequent paragraphs accordingly.

CHAPTER 13

HOSPITAL LICENSES AND INSPECTION

SECTION.

39-1332. Annual statement of valuation of taxable property.

39-1392g. Medical staff membership and privileges.

SECTION.

39-1394. Patient care records — Retention — Authentication.

39-1332. Annual statement of valuation of taxable property. — On or before the third Monday in July of each year the county auditor shall deliver to the secretary of each hospital district within the county a statement showing the aggregate valuation of all the taxable property in such district, and thereafter the district board shall levy the taxes herein provided for.

History.

1965, ch. 173, § 15, p. 340; am. 2012, ch. 38, § 2, p. 115.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 38, substituted "third Monday" for "first Monday" and "county auditor" for "county assessor."

Effective Dates.

Section 6 of S.L. 2012, ch. 38 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

39-1392a. Definitions.

JUDICIAL DECISIONS

Peer Review.

Where an orthopedic surgeon's letters to

the emergency room doctor were written to point out potential flaws he suspected might

have occurred in a patient's care, and related to quality assurance and improvement, investigation activities, and professional review of the patient's treating doctors and hospital,

the letters were privileged under the peer review statutes. *Nightengale v. Timmel*, 151 Idaho 347, 256 P.3d 755 (2011).

39-1392b. Records confidential and privileged.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Discovery.
Impeachment.

Applicability.

This section applies to a lawsuit brought against a hospital, claiming that the hospital acted in bad faith in refusing to renew a physician's privileges. There is no wording in this section that limits its scope to peer review records sought in a medical malpractice action. *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Discovery.

District court did not err holding that this section precluded a doctor from discovering information related to the hospital's peer review of the doctor. To waive protection of peer review information under § 39-1392e(f), the

hospital had to choose to disclose that information as part of its defense, before the doctor could access it. *Montalbano v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 837, 264 P.3d 944 (2011).

Impeachment.

An orthopedic surgeon's letters to an emergency room doctor regarding issues in the treatment of a patient were properly considered privileged by the peer review statutes. As such, they were not admissible for any purpose, including impeachment. *Nightengale v. Timmel*, 151 Idaho 347, 256 P.3d 755 (2011).

39-1392c. Immunity from civil liability.

JUDICIAL DECISIONS

Cited in: *Montalbano v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 837, 264 P.3d 944 (2011).

39-1392e. Limited exceptions to privilege and confidentiality.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Information held privileged.

Applicability.

By bringing a lawsuit, a physician waives his or her right to assert the peer review privilege. The health care organization, and the members of its staff and committees who are defendants in the lawsuit, can then elect also to waive the privilege in order to defend the lawsuit. *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Information Held Privileged.

District court did not err holding that § 39-

1392b precluded a doctor from discovering information related to the hospital's peer review of the doctor. To waive protection of peer review information under this section, the hospital had to choose to disclose that information as part of its defense, before the doctor could access it. *Montalbano v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 837, 264 P.3d 944 (2011).

39-1392g. Medical staff membership and privileges. — (1) Except as specifically provided in subsection (2) of this section, nothing in this section shall in any way change the authority of the governing body of any health care organization to make such rules, regulations, standards or qualifications for medical staff membership as it, in its discretion, may deem necessary or advisable, or to grant or refuse membership on a medical staff.

(2) An applicant for medical staff membership or privileges in a health care organization that has an organized medical staff, an applicant for reappointment to the medical staff of such health care organization, or a current member of the medical staff of such health care organization shall not be denied medical staff membership or privileges, nor shall membership or privileges be withdrawn, revoked, suspended or limited by such health care organization for the reason that:

(a) The applicant or current member of the medical staff holds an ownership interest in one (1) or more competing health care organizations;

(b) The applicant or current member of the medical staff is affiliated with one (1) or more competing health care organizations; or

(c) The applicant or current member of the medical staff is a competitor of one (1) or more members of the medical staff.

(3) Nothing in this section shall require a health care organization to grant privileges to an applicant for services that are subject to an exclusive contract or not offered in that facility.

(4) Nothing in this section shall be interpreted as changing the privilege, confidentiality, discoverability and admissibility of the information and records granted in section 39-1392b, Idaho Code.

History.

I.C., § 39-1392g, as added by 2012, ch. 167,
§ 1, p. 447.

39-1394. Patient care records — Retention — Authentication. —

(1) Retention.

(a) Hospital records relating to the care and treatment of a patient may be preserved in microfilm, other photographically reproduced form or electronic medium. Such reproduced and preserved copies shall be deemed originals for purposes of section 9-420, Idaho Code.

(b) Clinical laboratory test records and reports may be destroyed five (5) years after the date of the test recorded or reported therein, pursuant to paragraph (d) of this subsection.

(c) X-ray films may be destroyed five (5) years after the date of exposure, or five (5) years after the patient reaches the age of majority, whichever is later, pursuant to paragraph (d) of this subsection, if there are in the hospital record written findings of a physician who has read such x-ray films.

(d) At any time after the retention periods specified in paragraphs (b) and (c) of this subsection, the hospital may, without thereby incurring liability, destroy such records, by burning, shredding or other effective method in keeping with the confidential nature of their contents, provided, however,

that destruction of such records must be in the ordinary course of business and no record shall be destroyed on an individual basis.

(e) For purposes of this section, the term “hospital” shall include all facilities defined as hospitals in chapter 13, title 39, Idaho Code.

(2) Authentication.

(a) Hospital records relating to orders for the care and treatment of a patient or for the administration of any drug or pharmaceutical must be authenticated to ensure accuracy and patient safety.

(b) All orders must be authenticated by the author of the order or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law.

(c) When telephone or oral orders must be used, they must be:

(i) Accepted only by personnel authorized to do so by medical staff policies and procedures, consistent with federal and state law; and

(ii) Authenticated in a timely manner as stipulated by hospital policy.

(d) Authentication may occur either manually, with the practitioner’s signature, or electronically by facsimile transmission signed by the practitioner or by means of a unique electronic code known only to the practitioner.

(e) Each hospital must have in place policies and mechanisms to assure timely authentication of all orders and to assure that only the author of an order or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law can authenticate the order.

History.

I.C., § 39-1394, as added by 1977, ch. 102, § 1, p. 217; am. 2001, ch. 67, § 1, p. 125; am. 2013, ch. 114, § 1, p. 275.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 114, added “or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law” in paragraph (2)(b); deleted “by the author of the order” following

“Authenticated” in paragraph (2)(c)(ii); and substituted “or another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law can authenticate the order” for “can authenticate his or her own entry” in subparagraph (2)(e).

CHAPTER 16

FOOD ESTABLISHMENT ACT

39-1604. License requirements for food establishments.

JUDICIAL DECISIONS

Cited in: Ketterling v. Burger King Corp., 152 Idaho 555, 272 P.3d 527 (2012).

CHAPTER 19

FIRE ESCAPES AND DOORS

SECTION.

39-1901. Fire escapes to be provided for certain structures. [Repealed.]

39-1902. How attached. [Repealed.]

39-1904. Penalty for violating preceding sections. [Repealed.]

SECTION.

39-1905. Doors on public buildings — Penalty. [Repealed.]

39-1901. Fire escapes to be provided for certain structures. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 1, effective July 1, 2013. See §§ 41-253 and 41-256.

History.

1903, ch. 148, § 1; reen. R.C., § 1550, compiled and reen. C.L., § 1550; C.S., § 2586;

I.C.A., § 38-401; am. 1949, ch. 189, § 1, p. 404; am. 1957, ch. 103, § 1, p. 181; am. 1961, ch. 235, § 1, p. 381.

39-1902. How attached. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 2, effective July 1, 2013. See §§ 41-253 and 41-256.

History.

1903, p. 148, § 2; reen. R.C. & C.L., § 1551;

C.S., § 2587; I.C.A., § 38-1402; am. 1957, ch. 103, § 2, p. 181.

39-1904. Penalty for violating preceding sections. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 3, effective July 1, 2013. See §§ 41-253 and 41-256.

History.

1903, p. 148, § 4; reen. R.C., § 1553; com-

piled and reen. C.L., § 1553; C.S., § 2589; I.C.A., § 28-1404.

39-1905. Doors on public buildings — Penalty. [Repealed.]

Repealed by S.L. 2013, ch. 104, § 4, effective July 1, 2013. See §§ 41-253 and 41-256.

History.

1911, ch. 97, §§ 1, 3, p. 341; compiled and

reen. C.L., § 1553a; C.S., § 2590; I.C.A., § 38-1405.

CHAPTER 26

FIREWORKS

SECTION.

39-2611. Liability of parents.

39-2611. Liability of parents. — The parents or other persons having custody or control of a minor shall be liable for damage caused by the use of fireworks by the minor.

History.

I.C., § 39-2611, as added by 1997, ch. 246,
§ 2, p. 709; am. 2012, ch. 257, § 10, p. 709.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 257, deleted
“or guardians” following “parents” in the sec-

tion heading and deleted “guardians” follow-
ing “parents” near the beginning of the sec-
tion.

CHAPTER 30**RADIATION AND NUCLEAR MATERIAL****SECTION.**

39-3029. Pacific states agreement on radioac-

tive materials transportation
management. [Repealed.]

**39-3029. Pacific states agreement on radioactive materials trans-
portation management. [Repealed.]**

Repealed by S.L. 2012, ch. 255, § 2, effective April 3, 2012.

History.

I.C., § 39-3029, as added by 1987, ch. 57,
§ 1, p. 101.

STATUTORY NOTES**Legislative Intent.**

Section 1 of S.L. 2012, ch. 255 provided:
“Legislative Intent. It is the intent of the
Legislature to repeal statutes involving inac-
tive programs that require appointment of
members of the Legislature. In addition to the
repealed sections in this act, it is legislative

intent that no legislative appointment be
made for the purposes of the Idaho Commem-
orative Silver Medallions as provided in Sec-
tion 67-1223, Idaho Code, until the State
Treasurer issues a new series of medallions at
which time such legislative appointments
would be appropriate.”

CHAPTER 34**REVISED UNIFORM ANATOMICAL GIFT ACT****SECTION.**

39-3413. Search and notification.

39-3413. Search and notification. — (1) For purposes of this section,
“first responder” means a law enforcement officer, firefighter, emergency
medical services provider, coroner or other emergency rescuer.

(2) The following persons shall make a reasonable search of an individual
who the person reasonably believes is dead or near death for a document of
gift or other information identifying the individual as a donor or as an
individual who made a refusal:

(a) A first responder finding the individual; and

(b) If no other source of the information is immediately available, a
hospital, as soon as practical after the individual’s arrival at the hospital.

(3) For all individuals identified as a donor, following the determination
that an individual is deceased by a person qualified to do so, such person

shall, as soon as reasonably possible, notify the Idaho state communication center [Idaho emergency medical services communications center] of the location where the deceased will be or has been transported to and include the deceased individual's name and date of birth if known. The Idaho state communication center [Idaho emergency medical services communications center] shall, as soon as reasonably possible, notify the appropriate organ procurement organization, tissue bank or eye bank.

(4) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (2) (a) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(5) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section.

History.

I.C., § 39-3413, as added by 2007, ch. 30,
§ 2, p. 61; am. 2013, ch. 247, § 1, p. 597.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 247, rewrote the section, adding subsections (1) and (3).

Compiler's Notes.

The bracketed insertions in subsection (3)

were added by the compiler to correct the name of the referenced agency, see <http://healthandwelfare.idaho.gov/Medical/EmergencyMedicalServices2/StateCommunications2/tabid/1605/Default.aspx>.

CHAPTER 36

WATER QUALITY

SECTION.

39-3602. Definitions.

39-3604. Designation of instream beneficial uses.

39-3605. Identification of reference streams or conditions.

39-3606. Monitoring and use of reference streams or conditions and ben-

SECTION.

eficial use support assessment.

39-3607. Revisions and attainability of beneficial uses.

39-3609. Identification of water bodies where beneficial uses are not fully supported.

39-3602. Definitions. — Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) “Applicable water quality standard” means those water quality standards identified in the rules of the department.

(2) “Attainable” beneficial uses means uses that can be achieved by the implementation of required effluent limits for point sources and cost-effective and reasonable best management practices for nonpoint sources.

(3) “Best management practice” means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective

and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(4) "Board" means the board of environmental quality.

(5) "Consult" or "consultation" with basin advisory groups and watershed advisory groups, when not otherwise defined in this chapter, means that the director shall:

(a) Upon request, provide the groups with all available information in the possession of the department concerning the subject of the consultation;

(b) Utilize the knowledge, expertise, experience and information of the groups in making the determination that is the subject of the consultation; and

(c) Consider the groups' recommendations regarding the determination that is the subject of the consultation.

(6) "Control strategies" means cost-effective actions in TMDL implementation plans to control the discharge of pollutants that can reasonably be taken to improve the water quality within the physical, operational, economic and other constraints that affect individual enterprises and communities.

(7) "Degradation" or "lower water quality" means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body.

(8) "Department" means the department of environmental quality.

(9) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil and water conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of environmental quality for all other activities.

(10) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.

(11) "Director" means the director of the department of environmental quality, or his or her designee.

(12) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(13) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses may form the basis for subcategories of designated uses.

(14) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference

streams or conditions approved by the director in consultation with the appropriate basin advisory group.

(15) "General permit" means an NPDES permit issued by the U.S. environmental protection agency authorizing a category of discharges under the federal clean water act or a nationwide or regional permit issued by the U.S. army corps of engineers under the federal clean water act.

(16) "Integrated report" means the consolidated listing and reporting of the state's water quality status pursuant to the federal clean water act.

(17) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(18) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(19) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(20) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(21) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(22) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(23) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding

operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(24) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(25) "Reference stream or condition" means one (1) of the following:

- (a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or
- (b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or
- (c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(26) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(27) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(28) "Soil and water conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(29) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(30) "State" means the state of Idaho.

(31) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(32) “Subbasin assessment” means a document that describes a watershed or watersheds for which a total maximum daily load is proposed, the water quality concerns, the status and attainability of designated uses and water quality criteria for individual water bodies, the nature and location of pollutant sources, past and ongoing pollutant control activities, and such other information that the director with the advice of the local watershed advisory group determines is pertinent to the analysis of water quality and the development and implementation of a total maximum daily load.

(33) “Total maximum daily load (TMDL)” means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

(34) “Waters or water body” means the navigable waters of the United States as defined in the federal clean water act. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters.

(35) “Water pollution” is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(36) “Water quality standards” are the designated uses of a water body and water quality criteria necessary to support those uses, and an antidegradation policy.

(37) “Watersheds” means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

History.

I.C., § 39-3602, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 1, p. 828; am. 2001, ch. 103, § 31, p. 253; am. 2005, ch.

334, § 1, p. 1045; am. 2010, ch. 279, § 25, p. 719; am. 2011, ch. 116, § 2, p. 320; am. 2013, ch. 348, § 1, p. 941.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 348, added subsection (5) and renumbered the subsequent subsections accordingly.

Federal References.

The federal clean water act, referred to in

this section, is compiled as 33 USCS § 1251 et seq.

Section 402 of the federal clean water act, referred to in subsection (17), is compiled as 33 U.S.C.S., § 1342.

Sections 205, 208 and 303 of the federal clean water act, referred to in subsection (31),

are compiled as 33 U.S.C.S., §§ 1285, 1288 and 1313, respectively.

39-3604. Designation of instream beneficial uses. — (1) The director shall designate the beneficial uses each surface water body can reasonably be expected to attain.

(2) Designated beneficial uses shall reflect existing uses. The director shall designate beneficial uses without regard to whether the uses are currently being attained or whether the uses are fully supported at the time of designation. In designating beneficial uses, the director shall consider:

- (a) The existing uses of the water body;
- (b) The physical, geological, hydrological, atmospheric, chemical and biological measures that affect the water body;
- (c) The beneficial use attainability measures identified in section 39-3607, Idaho Code; and
- (d) The economic impact of the designation and the economic costs required to fully support the beneficial uses.

(3) When designating beneficial uses for a water body, the director shall consult with the basin advisory group and the watershed advisory group with the responsibilities described in this chapter for the water body. After consultation, the director shall identify the designated beneficial uses of each water body in the rules of the department pursuant to the rulemaking and public participation provisions of chapter 52, title 67, Idaho Code.

(4) Persons who either conduct nonpoint activities or who conduct operations on waters described in section 39-3609, Idaho Code, pursuant to a national pollution discharge elimination system permit, shall not be required to meet water quality criteria other than those necessary for the full support of a water body's existing and designated beneficial uses, except as provided in section 39-3611, Idaho Code.

History. § 1, p. 1165; am. 1997, ch. 279, § 2, p. 828; I.C., § 39-3604, as added by 1995, ch. 352, am. 2013, ch. 348, § 2, p. 941.

STATUTORY NOTES

Amendments. the section to the extent that a detailed comparison is impracticable.
The 2013 amendment, by ch. 348, rewrote

39-3605. Identification of reference streams or conditions. — The director shall, in consultation with the appropriate basin advisory group, identify reference streams or conditions to assist in determining whether the designated beneficial uses of water bodies within a basin are being fully supported. Streams or conditions shall be selected to represent the land types, land uses, hydrology, water uses and geophysical features within the basins described in this chapter. Reference streams or conditions shall be representative of one (1) of the following:

- (1) A stream or other water body reflecting natural conditions with few impacts from human activities and which is representative of the highest level of support attainable in the basin; or
- (2) A stream or water body reflecting the minimum conditions necessary

to fully support the designated beneficial uses of the stream or water body; or

(3) Physical, chemical and biological indicators identified in the rules of the department which reflect full support of designated beneficial uses.

History.

I.C., § 39-3605, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 3, p. 828; am. 2013, ch. 348, § 3, p. 941.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 348, in the introductory language, substituted “in consultation with the appropriate basin advisory group” for “in a manner consistent with the public participation provisions set forth in this chapter and in accordance with chapter

52, title 67, Idaho Code” and inserted “of water bodies within a basin” in the first sentence and inserted “hydrology, water uses” in the second sentence; and inserted “of the stream or water body” at the end of subsection (2).

39-3606. Monitoring and use of reference streams or conditions and beneficial use support assessment. — (1) The director shall conduct monitoring to determine whether designated beneficial uses of water bodies are fully supported. In making such determinations, the director shall consult with the basin advisory group and the watershed advisory group with the responsibilities described in this chapter for the water body. The director shall use the appropriate water quality standards as identified in the rules of the department and shall compare the physical, chemical and biological measures of the water body with the reference stream or condition appropriate to the land type, land uses, hydrology, water uses and geophysical features of the water body as described in section 39-3605(2), Idaho Code. If the water body has such physical, chemical or biological measures as the reference stream or condition, even though such measures may be diminished from the conditions set forth in section 39-3605(1), Idaho Code, then the director shall deem the designated beneficial uses for the water body to be fully supported and as having achieved the objectives of the federal clean water act and of this chapter. When site-specific standards have been developed for an activity pursuant to the rules of the department, the use of reference streams as described in this section shall not be necessary.

(2) The physical, geological, hydrological, atmospheric, chemical or biological measures of a water body to be used to determine whether beneficial uses are fully supported may include, but are not limited to: stream width, stream depth, stream shade, sediment, bank stability, water flows, physical characteristics of the stream that affect habitat for fish, macroinvertebrate species or other aquatic life, and the variety and number of fish or other aquatic life.

History.

I.C., § 39-3606, as added by 1995, ch. 352, § 1, p. 1165; am. 1997, ch. 279, § 4, p. 828; am. 2013, ch. 348, § 4, p. 941.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 348, rewrote

the section to the extent that a detailed comparison is impracticable.

39-3607. Revisions and attainability of beneficial uses. — The director shall, in consultation with the appropriate basin advisory group and watershed advisory group, conduct a beneficial use attainability assessment to determine whether beneficial uses should be revised. Designated uses shall be reviewed and revised when such physical, geological, hydrological, atmospheric, chemical or biological measures indicate the need to do so. The director shall consider the economic costs required to attain a revised beneficial use. A designated use, that is not an existing use, shall be removed when it is demonstrated that attaining the use is not feasible, using those factors set forth in 40 CFR 131.10(g).

Previous assessments of beneficial use attainability that are of a quality and content acceptable to the director shall constitute the baseline data against which future assessments shall be made to determine changes in the water body and what beneficial uses can be attained in it. In addition, the director, to the extent possible, may determine whether changes in the condition of the water body are the result of past or ongoing point or nonpoint source activities. The director shall also seek information from appropriate public agencies regarding land uses, water uses and geological or other information for the watershed that may affect water quality and the ability of the water body in question to attain designated beneficial uses. In carrying out the provisions of this section, the director may contract with private enterprises or public agencies to provide the desired data.

History.

I.C., § 39-3607, as added by 1995, ch. 352,
§ 1, p. 1165; am. 2013, ch. 348, § 5, p. 941.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 348, rewrote the first paragraph to the extent that a de-

tailed comparison is impracticable and inserted “water uses” in the next-to-last sentence in the second paragraph.

39-3609. Identification of water bodies where beneficial uses are not fully supported. — In accordance with the provisions set forth in the federal clean water act and after consultation with the appropriate basin advisory group and watershed advisory group, the director shall notify the appropriate public agencies of any water bodies in which the designated beneficial uses are not fully supported. For water bodies so identified, the director shall place such water bodies into one (1) of the following priority classifications for the development of total maximum daily load or equivalent processes:

(1) “High,” wherein definitive and generally accepted water quality data indicate that unless remedial actions are taken in the near term there will be significant risk to designated or existing beneficial uses of a particular

water body. The director, in establishing this category, shall consider public involvement as set forth in this chapter.

(2) "Medium," wherein water quality data indicate that unless remedial actions are taken there will be risks to designated or existing beneficial uses.

(3) "Low," wherein limited or subjective water quality data indicate designated uses are not fully supported, but that risks to human health, aquatic life, or the recreational, economic or aesthetic importance of a particular water body are minimal.

History.

I.C., § 39-3609, as added by 1995, ch. 352,

§ 1, p. 1165; am. 1997, ch. 279, § 5, p. 828; am. 2013, ch. 348, § 6, p. 941.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 348, substituted "after consultation with the appropriate basin advisory group and watershed advisory group" for "the public participation provisions set forth in this chapter" in the first sentence of the introductory paragraph.

Federal References.

The federal clean water act, referred to in the introductory paragraph, is codified as 33 USCS § 1251 et seq.

CHAPTER 41

IDAHO BUILDING CODE ACT

SECTION.

39-4106. Idaho building code board created — Membership — Appointment — Terms — Quorum — Compensation — Meetings.

SECTION.

39-4115. Personnel.

39-4106. Idaho building code board created — Membership — Appointment — Terms — Quorum — Compensation — Meetings. —

(1) The Idaho building code board is established within the division as an appeals, code adoption and rulemaking board, to be appointed by the governor, and shall consist of ten (10) members: one (1) member of the general public; one (1) local fire official; one (1) licensed engineer; one (1) licensed architect; two (2) local building officials, one (1) from a county and one (1) from a city; two (2) building contractors, one (1) residential contractor who is an active member of the Idaho building contractors association with construction knowledge based primarily on a work history of buildings regulated by the International Residential Code, and one (1) commercial contractor who is an active member of either the associated builders and contractors or the associated general contractors of America with construction knowledge based primarily on a work history of buildings regulated by the International Building Code; one (1) representative of the modular building industry; and one (1) individual with a disability from an organization that represents people with all types of disabilities. Board members shall be appointed for terms of four (4) years and until their successor has been appointed. Three (3) consecutive failures by a member to attend meetings of the board without reasonable cause shall constitute

cause for removal of the member from the board by the governor. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(2) The members of the board shall, at their first regular meeting following the effective date of this chapter and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. A majority of the currently appointed members of the board shall constitute a quorum.

(3) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(n), Idaho Code, for each day spent in attendance at meetings of the board.

(4) The board shall meet for regular business sessions at the call of the administrator, chairman, or at the request of four (4) members of the board, provided that the board shall meet at least biannually.

History.
I.C., § 39-4106, as added by S.L. 1975, ch. 180, § 2, p. 486; am. 1980, ch. 247, § 39, p. 582; am. 1983, ch. 153, § 3, p. 407; am. 1986, ch. 304, § 1, p. 755; am. 1988, ch. 264, § 14, p.

519; am. 1995, ch. 267, § 10, p. 856; am. 2000, ch. 465, § 2, p. 1439; am. 2001, ch. 151, § 1, p. 546; am. 2002, ch. 345, § 8, p. 963; am. 2009, ch. 173, § 1, p. 551; am. 2012, ch. 36, § 1, p. 107.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 36, substituted “59-509(n)” for “59-509(h)” in subsection (3).

39-4111. Permits required.

JUDICIAL DECISIONS

Negligence Per Se.
Applicable building codes requiring a building permit did not mandate site engineering, and the landowner’s failure to obtain a building permit was not the proximate cause of the operator’s injury; thus, negligence per se was not shown. *Stem v. Prouty*, 152 Idaho 590, 272 P.3d 562 (2012).

39-4115. Personnel. — The division shall designate a nonclassified employee to serve as the executive director of the board and such other personnel as necessary to effect enforcement of the codes herein enumerated or otherwise prescribed by rules promulgated by the board pursuant to this chapter.

History.
I.C., § 39-4115, as added by 1975, ch. 180,

§ 2, p. 486; am. 2002, ch. 345, § 19, p. 963; am. 2012, ch. 28, § 1, p. 85.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 28, substituted “designate a nonclassified employee to serve” for “employ a bureau chief, who shall in addition to his other duties, function” near the

beginning of the first sentence and deleted the former last sentence, which read: “All such employees, except the bureau chief, shall be classified as prescribed in chapter 53, title 67, Idaho Code.”

CHAPTER 44

HAZARDOUS WASTE MANAGEMENT

SECTION.

39-4432. Distribution of commercial disposal fee revenues.

39-4432. Distribution of commercial disposal fee revenues. — The revenues received from the commercial disposal fees imposed by this chapter and any penalties, interest, or deficiency additions, shall be paid over to the state treasurer by the department to be distributed periodically but no less frequently than quarterly as follows:

(1) An amount equal to ninety-five percent (95%) shall be remitted to the general fund of the state, which percentage shall be reduced to ninety-three percent (93%) in fiscal year 2013, to ninety-one percent (91%) in fiscal year 2014, to eighty-five percent (85%) in fiscal year 2015, and shall remain at eighty-five percent (85%) for each fiscal year thereafter; and

(2) An amount equal to five percent (5%) shall be remitted to the county treasurer of the county where the activity occurred which caused the fees to be assessed pursuant to this chapter. Moneys returned to the county shall be utilized by the county to respond to health and environmental problems which may be caused by hazardous waste emergencies or spills, or improperly handled or packaged hazardous waste; and

(3) An amount equal to one percent (1%) in fiscal year 2013, an amount equal to two percent (2%) in fiscal year 2014, and an amount equal to five percent (5%) in fiscal year 2015, and an amount equal to five percent (5%) for each fiscal year thereafter shall be remitted to the treasurer of a county highway district created pursuant to chapter 13, title 40, Idaho Code, to maintain a road under the jurisdiction of such district that connects a rail transfer facility to a commercial hazardous waste facility affiliated with such rail transfer facility. The use of the moneys provided for in this subsection shall be used only for the maintenance, construction and repair of the road described in this subsection; and

(4) An amount equal to one percent (1%) in fiscal year 2013, an amount equal to two percent (2%) in fiscal year 2014, and an amount equal to five percent (5%) in fiscal year 2015, and an amount equal to five percent (5%) for each fiscal year thereafter shall be remitted to the state highway account established in section 40-702, Idaho Code, such amount to be utilized by the Idaho transportation department to maintain a road or roads under the state board of transportation's jurisdiction that connects a rail transfer facility to a commercial hazardous waste facility affiliated with such rail transfer facility. The use of the moneys provided for in this subsection shall be used only for the maintenance, construction and repair of the road described in this subsection.

History.

I.C., § 39-4432, as added by 1984, ch. 205, § 10, p. 502; am. 1989, ch. 419, § 1, p. 1023;

am. 1997, ch. 313, § 4, p. 926; am. 1998, ch. 229, § 7, p. 778; am. 1999, ch. 290, § 6, p. 718; am. 2012, ch. 304, § 1, p. 843.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 304, in subsection (1), added the provisions beginning “which percentage shall be reduced”; in subsection (2), deleted “the remaining” preceding

“five percent” and deleted the former second sentence which read, “Moneys shall be apportioned to the counties in the same proportional manner in which they were collected”; and added subsections (3) and (4).

